**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

(b)(6)

DATE: MAR 0 8 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a high school science and math teacher for in Maryland. The petitioner has taught at since 2007. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree.[1] The sole issue in contention is whether

[1] Counsel has asserted that the petitioner holds a master's degree, and the director did not dispute the claim. A transcript from however, indicates only that the petitioner "passed the comprehensive examinations for the Master of Arts in Teaching Major in Science (MATS) program held on ." The transcript does not indicate that the university had awarded the degree, or that passing the examinations is the only requirement for the degree. A credential evaluation in the record states only that the petitioner holds a degree "equivalent to a U.S. Bachelor of Education degree," followed by "42 U.S. semester credits of graduate studies" in environmental science and "30 U.S. semester credits of post graduate professional studies" in "Effective Instructional Practices." Nevertheless, the petitioner's more than five years of progressive post-baccalaureate experience is

the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dept. of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

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equivalent to a master's degree. *See* 8 C.F.R. §§ 204.5(k)(2) and (3)(i)(B). Therefore, this observation does not materially alter the outcome of the petition.

The petitioner filed the Form I-140 petition on February 17, 2012. Counsel stated that the petitioner is "capable of helping the nation improve the education of children in Science, Math (STEM)." STEM is an acronym for "science, technology, engineering and mathematics."

In an accompanying statement, the petitioner stated that, despite success as a teacher in the Philippines, she accepted a position in the United States in order to pay for the education of her three sons. She stated:

> In August 2006, I started my teaching career in America at [redacted] Despite challenges and culture shock I persevered. . . . [T]oward the end of my first year, I was able to establish a strong bond with my students, parents, and colleagues. A result of the Benchmark test has showed significant improvement, over and beyond the expectations for at-risk students. But then came several incidents of suicide deaths from Filipino colleagues out of depression and pressure from work. And so when I heard that [redacted] offer better opportunity for green card sponsorship, I decided to apply and was hired.
>
> Currently, I am a Mathematics teacher at [redacted] . . . During my first year, I was chosen to handle the [redacted] Program in the school. Said program was designed to help students who are mathematically challenged and needs [*sic*] to pass the High School Assessment for Algebra and graduate. Eventually, I was chosen as the lead teacher of the program, chosen to do an educational training video now posed at [redacted] website. My supervisor for the program, [redacted] has brought in visitors coming from nearby school districts and from [redacted] to observe my classes. . . . [O]ur group has decided to sign up for a presentation in the next [redacted] to be held in Florida, where I will be the lead presenter and highlighting my educational training video. Eventually, the program has ended because of budget constraints. . . . I have closely worked with my administrators, supervisors, guidance counselors, colleagues . . . and with parents to ensure the success of all students not only in my classes but all students in the school. I have mentored new teachers . . . [and] established a strong bond with students. . . .
>
> But my H1 visa is expiring by June 18th of 2012. [redacted] cannot anymore fulfill its promise to us foreign teachers. Currently the school board is debarred by Department of Labor because of willful violations regarding hiring of foreign teachers. Despite dedicated years of service, why am I to suffer from what the school board failed to comply?

The Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against [redacted] owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS will not approve any employment-based immigrant or

nonimmigrant petitions filed by [redacted].[2] This debarment means that [redacted] is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5. Neither the Texas Service Center nor the AAO is responsible for the debarment, and those entities have no authority to override or modify it. When the Department of Labor has penalized a given employer for abuse of the immigration process, it is not self-evidently in the national interest to circumvent that penalty by granting immigration benefits directly to prospective foreign employees, without the safeguards built into the job offer/labor certification process. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent [redacted] from filing a petition on her behalf.

A copy of the petitioner's Maryland Educator Certificate, valid from [redacted] lists two "Certification Areas" (environmental science and mathematics, both grades 7-12), and lists the petitioner's "Highest Degree" as "Bachelor's."

The petitioner submitted copies of numerous documents arising from her work, including copies of photographs, evaluations, and certificates recognizing various achievements and her participation in various activities. These materials document the petitioner's past career as an educator, but they do not show that her work in the Philippines or in the United States has had an impact beyond the districts where she served at any given time. The AAO notes the petitioner's presentations at national conferences, but the record does not establish that those presentations have had a lasting impact outside of the petitioner's own school district. The subsequent cessation of [redacted]'s involvement in the [redacted] program appears to foreclose future impact in that area.

The petitioner submitted 29 letters from teachers, administrators, students, and others familiar with her work as a teacher. The witnesses praised the petitioner's abilities but did not show that the petitioner's work has been particularly influential beyond the local level.

While education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. *NYSDOT*, 22 I&N Dec. 217 n.3. While *NYSDOT* referred specifically to "elementary school" teachers, the same logic applies to teachers at other levels; the use of the phrase "elementary school" as an illustrative example does not imply otherwise. It cannot suffice for the petitioner to speculate about wider impact in the future. The petitioner must establish a past history of demonstrable achievement with some degree of influence on the field as a whole. *See id.* at 219 n.6.

On June 9, 2012, the director issued a request for evidence, instructing the petitioner to submit documentary evidence to meet the guidelines set forth in *NYSDOT*. The director observed that the petitioner's qualifications as a teacher do not presumptively qualify her for the waiver. The director

[2] The list of debarred employers is available online at http://www.dol.gov/whd/immigration/H1BDebarment.htm (printout added to record February 27, 2013).

acknowledged the petitioner's submission of copies of numerous certificates, but found that the petitioner had submitted nothing to show their significance. The director requested "evidence of the full scope of influence [the petitioner's] teaching has had on that profession." The director also asked whether the petitioner's work had influenced teaching in multiple countries, or attracted national or international media attention.

In response, counsel justifiably stated that the director's references to international media set an unreasonably high standard. Counsel contended: "the more realistic mandate of the AAO decision in the Matter of New York State Dept. of Transportation is whether the candidate's past record of achievement had more likely than not substantially equip[ped] her to fulfill the national interest." Counsel stated that the petitioner's "achievements have reached the level that render her fully capable of fulfilling the national interest in the Mathematics education of the American students." Counsel then re-listed the certificates submitted previously. Counsel asserted that certificates from the Philippines should not have less weight than certificates from the United States, but the director had not stated otherwise.

The petitioner submitted copies of memoranda discussing some of her certificates. These documents refer to professional conferences and training sessions. They do not demonstrate that the petitioner has had significant impact or influence on her field, for instance by significantly shaping curricula in school districts other than her own or by introducing improvements or reforms that have improved grades, attendance, or knowledge retention among students.

The petitioner, in a new statement, stated:

> I have recently upgraded my teaching certificate which now certifies me in three areas of specialization (Chemistry, Environmental Science and Mathematics). This is a very rare occurrence where a majority of the teachers are certified in only one area. This therefore makes me a versatile educator who can better contribute to the current thrust of American education in STEM. . . . Equipped with skills and knowledge in these fields, I can better handle my classes through inter-disciplinary lessons which can awaken the students' appreciation of the STEM fields.

A newly submitted certificate shows the same validity dates as the certificate submitted previously, but now it shows three certification areas instead of two, and lists her highest degree as a master's degree. The certificate does not show the dates of these changes. Any change that took place after the petition's filing date cannot retroactively establish eligibility. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner submitted no evidence to support her claim that her triple certification "is a very rare occurrence." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l

Comm'r 1972)). Most importantly, certification in multiple subjects does not establish prior impact or influence on the field, nor does it readily demonstrate prospective national benefit. The petitioner has not shown that her certification in multiple subjects will significantly benefit students other than her own. As noted previously, exceptional ability, defined as "a degree of expertise significantly above that ordinarily encountered," is not an automatic or presumptive basis for the waiver. Therefore, the petitioner cannot qualify for the waiver simply by listing credentials that many others in her field do not possess.

The petitioner submits a digital copy of "a film clip that shows [her] contribution in initiative to raise [assessment test scores]. Through it airs review sessions covering topics and questions that are covered in the state tests."

The petitioner submitted additional letters and electronic mail messages, which, the petitioner claimed, "show that even visitors from other school districts are brought to [her] classroom for observation." The messages in the record indicate that "a few visitors from Baltimore" attended some of the petitioner's classes in 2007 and 2008 to learn "how the program works." of complimented the petitioner's performance and stated: "we are proud to hold you as one of of [*sic*] model classrooms." The record does not establish the extent to which the petitioner's classroom subsequently served as a "model" in the program, or show that the petitioner designed the "model" aspects of the program (as opposed to following a blueprint created by others).

A June 9, 2008 letter from of reads, in part:

> [The petitioner] has been an active participant in the training and the teaching of the high school intervention program in She has established a model classroom with strong rituals and routines; her students are truly engaged in learning mathematics.
>
> was so impressed with the teaching and learning in her classes that we asked if we could videotape her teaching. We developed a video to share with other teachers – in and throughout the country.

Several PGCPS teachers also asserted that has nationally distributed video footage of one of the petitioner's classes. Neither they, nor any official from indicated that the petitioner actually developed any aspect of the program. Rather, the available evidence suggests that selected the petitioner for the film because of her ability to demonstrate the plan, rather than her role in designing it.

The director denied the petition on October 27, 2012. The director acknowledged the intrinsic merit of the petitioner's occupation, but found that the petitioner had not established that the benefit from the petitioner's intended work for would be national in scope, or that the petitioner had established a past history of impact or influence on the field as a whole.

Counsel asserts: "Exclusively and strictly enforcing the rudiments behind the New York State Department of Transportation Case to Highly Qualified Teachers is unjust, unreasonable and damaging to the 'Best Interest' of the American School Children." Precedent decisions are binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel cites no statute, regulation or case law that would require or permit USCIS to disregard *NYSDOT* as it applies to school teachers. Counsel repeatedly refers to presidential speeches and federal initiatives such as the No Child Left Behind Act (NCLBA), stating that they demonstrate the "underlying urgency on this matter," but counsel identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. Counsel notes that Congress passed the NCLBA "about three (3) years after" the issuance of *NYSDOT*, and that therefore "Congress has in effect engraved the missing definition upon the concept of 'in the national interest,' i.e., centered on the 'Best Interest of American School Children.'"

The assertion that the NCLBA is tantamount to a retraction or modification of *NYSDOT* is not persuasive; the NCLBA did not amend section 203(b)(2) of the Act. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not made a persuasive claim that NCLBA indirectly implies a similar legislative change.

Counsel lists previously submitted certificates, stating that they constitute "overwhelming evidence" that the petitioner "has a past history of achievement with some degree of influence on the field of math education as a whole." Counsel does not explain this contention. The certificates indicate that the petitioner organized functions at individual high schools (such as the [redacted] at [redacted], coached various competitions, and served as a "facilitator/trainer" at various regional or division workshops between 2002 and 2004. The lack of an explanation for how these activities (most of them local) show influence on the field as a whole is a significant omission. Furthermore, the petitioner has worked for [redacted] since 2008, several years before the filing date, and the record does not show how the petitioner's work there has produced benefits that are national in scope or will continue to do so in the future.

Counsel states:

> [T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again including national security.

Counsel fails to explain how the actions of one mathematics teacher would contribute significantly to nationwide social reform and economic recovery (except to speculate that one of her students may eventually become "a national figure such as a President, a legislator, a member of the judiciary, a scientist, among others"). General assertions about the overall importance of education, and the need for education reform, do not exempt every teacher from the job offer requirement. As

members of the professions (as defined in section 101(a)(32) of the Act), teachers are subject to the job offer/labor certification requirement set forth in sections 203(b)(2)(A) and (3)(C) of the Act. Likewise, aliens of exceptional ability who "will substantially benefit prospectively . . . the United States" are also subject to the job offer provision of section 203(b)(2)(A) of the Act. Congress created no blanket waiver for teachers of math, science or any other subject. It is clear from the statute, therefore, that an alien who works in a beneficial profession such as teaching mathematics is not automatically or presumptively exempt from the job offer requirement, notwithstanding hypothetical conjecture about what her students may achieve in the future.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.